

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
APRIL 13, 2016**

**CALL TO
ORDER
5:58 pm**

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. at the Earl Bennett Building, Conference Rooms A and B, 1035 1st Ave W, Kalispell, Montana. Board members present were Marie Hickey-AuClaire, Kevin Lake, Ron Schlegel, Dean Sirucek, Jim Heim, Greg Stevens, Jeff Larsen and Mike Horn. Mark Mussman and Erik Mack represented the Flathead County Planning & Zoning Office.

There were five (5) people in the audience.

**APPROVAL OF
MINUTES
5:58 pm**

Heim made a motion, seconded by Sirucek to approve the March 9, 2016 workshop minutes.

**ROLL CALL
VOTE
APPROVAL OF
MINUTES
5:59 pm**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION
5:59 pm**

Schlegel brought up an error in the workshop minutes regarding the 2:1 slope and the lengthy discussion the board had. The minutes did not reflect the discussion as well as the board would like.

**MOTION TO
RESCIND
ORIGINAL
MOTION TO
APPROVE THE
MARCH 9, 2016
WORKSHOP
MINUTES
6:00 pm**

Heim rescinded his motion to approve the March 9, 2016 Workshop minutes. Those minutes will be reviewed at the next regular meeting along with the March 9, 2016 regular meeting minutes that were not included in the board packets.

**ROLL CALL
VOTE TO
RESCIND
APPROVAL OF
MARCH 9, 2016
WORKSHOP**

On a roll call vote the motioned passed unanimously.

MINUTES

6:00 pm

**PUBLIC
COMMENT**

*(not related to
agenda items)*

6:00 pm

None

**MARK &
KIMBERLY
LISTER/
DEBBIE
STREET
(FZC-16-01)
6:05 pm**

A Zone Change request in the Highway 93 North and Evergreen Zoning Districts by Sands Surveying, on behalf of Debbie Street and Mark & Kimberly Lister. The proposal would change the zoning on a parcel containing 11.266 acres from SAG-10 (Suburban Agricultural) and AG-80 (Agricultural) to R-2.5 (Rural Residential) and a portion of a parcel containing 25.832 acres from SAG-10 (Suburban Agricultural) to SAG-5 (Suburban Agricultural).

**STAFF REPORT
6:07 pm**

Mack reviewed Staff Report FZC-16-01 for the Board.

**BOARD
QUESTIONS
6:12 pm**

None

**APPLICANT
PRESENTATION
6:12 pm**

Erica Wirtala, Sands Surveying, Inc. represented the applicants. She stated the Street property was located within the Riverdale NP and spoke about water and sewer being available in the future

The purpose was for estate planning...she addressed the FC Road & Bridge Department's comments regarding the slope of the street. She spoke about the approach/access and floodplain and stated if the zone change was approved and more houses were built in that area, it would have to go through a change of use permit application with the Road Department and those issues would be taken care of at that point. Wirtala spoke of ways to improve the access.

**BOARD
QUESTIONS
6:15 pm**

Sirucek asked why they were combined into one application.

Wirtala said it was monetary and they had a common purpose.

Sirucek asked how many children were in each family.

Lister and Street answered; Debbie Street has two and the

	Lister's have three.
AGENCY COMMENTS 6:15 pm	None
PUBLIC COMMENT 6:15 pm	None
APPLICANT REBUTTAL 6:15 pm	Lister pointed out on the map where the property they purchased was.
STAFF REBUTTAL 6:16 pm	None
MAIN MOTION TO ADOPT F.O.F. (FZC-16-01) 6:16 pm	Sirucek made a motion seconded by Horn to adopt Staff Report FZC-16-01 as findings-of-fact.
BOARD DISCUSSION 6:16 pm	None
ROLL CALL TO ADOPT F.O.F. (FZC-16-01) 6:17 pm	On a roll call vote the motion passed unanimously.
BOARD DISCUSSION 6:17 pm	None
MAIN MOTION TO RECOMMEND APPROVAL OF CONDITIONS (FZC-16-01) 6:17 pm	Heim made a motion seconded by Schlegel to adopt Staff Report FZC-16-01 and recommend approval to the Board of County Commissioners.

**BOARD
DISCUSSION
6:17 pm**

None

**FLATHEAD
COUNTY
FLOODPLAIN
AND
FLOODWAY
MANAGEMENT
REGULATIONS
6:19 pm**

A request by the Planning and Zoning Office for a complete revision of the Flathead County Floodplain and Floodway Management Regulations. In order for Flathead County to continue to actively participate in the National Flood Insurance Program, the State of Montana Department of Natural Resources and Conservation (DNRC) and the Federal Emergency Management Agency (FEMA) is requiring Flathead County to revise these regulations to better align with the DNRC State Model Floodplain Hazard Management Regulations. The complete revision includes purpose, authority, general provisions, definitions, forms and fees, regulated flood hazard areas, uses allowed without a permit, prohibited uses, floodplain permit application requirements, application evaluation, development requirements in the floodway, development requirements in the flood fringe, emergencies, variances, administrative appeals, regulated flood hazard areas within the Lakeshore Protection Zone, enforcement, and penalties. Information regarding this request and a text of the complete revision is available at the Flathead County Planning and Zoning Office and online at https://flathead.mt.gov/planning_zoning. Written comments may be submitted in person, by mail at 1035 First Ave West, Kalispell, MT 59901 or by email at planning.zoning@flathead.mt.gov. The Planning and Zoning Office encourages all comments to be submitted on or before April 13, 2016.

**STAFF REPORT
6:20 pm**

Mussman reviewed the changes in the regulations that were highlighted in yellow for the Board. Mussman went over comments received.

**BOARD
QUESTIONS**

Horn asked about the definition of the 100-year floodplain.

Mussman clarified and gave an example of a 1% chance of flood.

Horn said his understanding of the 100-year floodplain was that the probability was 50% that you would have a flood within 100 years.

Mussman said FEMA was trying to transition the 100-year floodplain to a 1% annual chance.

Schlegel stated the '64 flood was a 500-year flood.

Mussman stated that flood hazard areas in a 500-year floodplain were not regulated by these regulations.

Horn asked if any fee changes would go before the county commissioners.

Mussman explained the process of fee increases.

Sirucek had a question about process specifically if all questions should be addressed to Mussman.

The board and staff discussed the procedure.

Horn asked if the State would have to approve what the Planning Board decided.

Mussman said the State had reviewed the revisions and gave it an okay. He stated that if the Planning Board made any changes they would be forwarded to the County Commissioner's and then the State for approval.

Schlegel asked if the board accepted higher regulatory standards than the state regulations and someone challenged them, would the county lose.

Mussman stated that we couldn't prevent anybody from challenging those standards but he felt that it would not be hard to defend a compelling government interest in having higher regulatory standards to protect all the residents in Flathead County. His impression was that nearly every challenge in every jurisdiction that had arose, the court has ruled in favor of the adoption of the regulations.

He gave an example and stated that the models are getting more accurate as technology advances.

Sirucek asked if Mussman was in disagreement to the River Commission's recommendation.

Mussman and Sirucek discussed the River Commission's letter at length. Mussman stated that he thought their main concern was over higher regulatory standards and Mussman felt that the draft regulations did not contain higher regulatory standards.

Sirucek agreed.

Mussman stated that the River Commission spent quite some time discussing the language of the existing regulations that are not in the State Model regulations specifically Section 1.13 Compliance (B) 'An applicant is required to submit certification by a registered professional engineer, architect, land surveyor...', he stated that the River Commission believed that this meant that by doing so the applicant had met all of the requirements of this regulation. Mussman spoke to the process of floodplain permits in Flathead County.

Sirucek reiterated that the River Commission's primary concern was to 'higher regulatory standards'.

Horn asked regarding the conservation district talking about adding things like water diversion, micro-hydro facility, and irrigation diversion was there any rational behind adding those things.

Mussman said that the email which states under Chapter 2, Definitions; Development: any man-made change to improved or unimproved real estate, including but not limited to... 'Add water diversions and micro hydro facilities to this list' was all he had received.

**AGENCY
COMMENTS
7:02 pm**

None.

**PUBLIC
COMMENT
7:04 pm**

Gary Saurey-stated he was on the River Commission but was submitting a comment as an individual. His objection revolved around most of the additions by staff to the proposed regulations which he felt were already addressed in the model regulations and had been imbedded at the state level. The model regulations are clearer than the current version of the county regulations.

Most of the additions under definitions are regarding flood insurance and the regulations do not cover flood insurance.

Saurey stated the model regulations are precise. While the model regulations do allow for communities to vouch higher standards, those communities may have to make findings of fact and he doesn't think any findings of fact had been made.

If the Commissioners adopt the model regulations then the county would have minimum standards. If there was a reason for higher standards, it would need to be really vetted and as a county they might be defending that, therefore the Board is much better off adopting the model regulations.

Saurey asked why the proposed regulations had been submitted to the State for pre-approval before this hearing, saying it seemed backwards.

Stevens stated that to him this just meant that the Board was not trying to approve something that the State would not accept. It gives the Board assurance that what they are considering would be acceptable at the higher level.

Mussman said the proposed regulations state under 1.3 (b) These regulations have been reviewed by Montana Department of Natural Resources and Conservation and the Federal Emergency Management Agency. The Montana Department of Natural Resources and Conservation has found the regulations acceptable in meeting the Department minimum standards. The Federal Emergency Management Agency finds that these regulations are adequate and consistent with the comprehensive criteria for land management and use pursuant to the standards established in 44 CFR 60.3. Mussman also stated that if the proposed regulations were adopted, or if changes were made to the proposed regulations, it would again go to the State before heading to the Commissioner's to make sure it would be something they would approve.

Schlegel asked why Mussman didn't just submit the minimal standards first and then the Board could discuss additions.

Mussman said he had no certainty how the state would feel about proposed additions. He felt it was important to include these additions, but the Board could decide to adopt the Model regulations with no additions and the planning office and would try to administer the regulations the best we could. Mussman thought the additions make the regulations more effective and more efficient to administer.

Saurey stated he thought the Model regulations were clear and concise and more usable than the old regulations. He felt the Model regulation had been vetted over a long period of time.

**STAFF
REBUTTAL
7:20 pm**

None

**MAIN MOTION
TO ADOPT
(FRTA-16-01)
7:20 pm**

Stevens made a motion seconded by Heim to send a favorable recommendation to the Board of County Commissioners.

**BOARD
DISCUSSION
7:21 pm**

Stevens thanked Mussman and staff for the work on the proposed regulations. He recalled the Board had tried to enforce higher standards on subdivision regulations.

Larsen said it was sanitation regulations and basically you need findings of fact and peer review study.

Stevens and Larsen discussed the processes of higher regulations regarding subdivision and sanitation.

Heim commented he agreed with Sirucek regarding whether or not the proposed regulations were a higher standard and he felt they were minor changes and for clarification purposes.

Sirucek pointed out Compliance 1.08 under the model regulations was significantly different than the proposed regulations.

Mussman read from the state model regulations regarding compliance. He said Saurey had a point regarding some of the proposed regulations being redundant, but that Compliance was very important for a lot of different reasons.

Stevens understood it was not a higher standard and he didn't know what kind of development a person could do without the help of a professional. He gave an example and stated most people could not do the first step without some sort of technical assistance. Stevens felt they were more in the nature of redundancy than to the nature of higher standards.

Sirucek asked Mussman about crawl space...stating it was not in

the state regulations but in the federal.

Mussman confirmed and pointed out the technical bulletin FEMA Technical Bulletin 2.

The state has some language regarding crawl space construction which states the only way to elevate a structure is by using fill, to him that is the worst place to elevate. If you have a large lot the fill is acceptable however, a lot of people would want new development or substantial improvements that don't have enough room for fill then you would affect the flood flow and flood heights, etc. Where, if you build on stem walls the impact of that elevation is much less than yards and yards of fill.

Larsen asked Mussman what the River Commission thought...he felt the board should have a workshop with the River Commission and get their thoughts.

Stevens didn't think the minor differences between the regulations would require a workshop. He would like a touch more information from Saurey.

Saurey was not speaking for the River Commission but the compliance was a blanket requirement of certification of compliance with regulations for all activities in the regulated flood hazard areas. In the model regulations there are activities that don't necessarily require certification not only of the base flood elevation but also certification that they are in compliance with these regulations. He felt it expanded on the certification requirements for compliance adding an extra level of certification that a person could be charged a lot of money for, if that were the case it seemed like it was an additional burden on the public.

He spoke about the discussion about the stem wall addition stating there were provisions for wet flood proofing in the Model regulations, the proposed regulations are much more detailed so as a lay person would he also have to have an engineer certify as to his having met that requirement and also pay an engineer to certify that it meets all the other requirements of the regulations Will it add to or decrease the burden on the public?

Mussman clarified and spoke to the requirements under this regulation.

**MAIN MOTION
TO RESCIND**

Stevens withdrew his earlier motion to send a favorable recommendation to the Commissioners. Heim seconded the

**MOTION TO
APPROVE
(FRTA-16-01)
7:20 pm**

withdrawal of the motion.

**MAIN MOTION
TO ADOPT
MODEL
REGULATIONS
7:43 pm**

Stevens made a motion seconded by Larsen to send the State Model Regulations to the Commissioner's for approval.

**BOARD
DISCUSSION
7:44 pm**

Larsen wanted the River Commission to explain their recommendation.

There was some discussion as to the River Commission's recommendation and wanting more information as to their reasoning.

Horn asked if there were any additions to the Model regulations that were critical enough to be placed in the proposed regulations.

Larsen stated that the River Commission did not think so.

Heim spoke about how laws are made and the Montana Code. He stated that the Administrative Rules of Montana (ARM) help explain those laws and make them easier to administer. He liked the way the proposed regulations read and thought it made it easier to administer. He asked who approves administrative rules in Montana.

Larsen spoke of the procedure and how they are approved.

Schlegel said no matter what you do it won't fix it somebody will find a loophole.

The Board discussed in detail the fact that they thought less wording was better and they felt that was what the River Commission may have been saying.

Mussman said there are some definitions of terms in the state model regulations that leave a lot up to interpretation. There are some technical terms that are not defined in the model regulations. He felt that some of the proposed regulations could be modified but not all of them.

Sirucek gave examples of projects that did not need engineering review but were required to have that done...people are doing projects without getting permits so they don't have to go through the cost or the hassle of getting an engineer. He liked what Mussman had proposed and said the minimal projects just needed a clearer definition.

Stevens read the River Commission's comment and stated he didn't feel the need to hold a separate hearing for them because they have already given their recommendation. It seemed to him they should adopt the model regulations.

Larsen said there are a few things in the proposed changes that he agreed with.

Mussman spoke to the addition to Chapter 14 in the proposed regulations.

The Board discussed in detail the recommendation of the River Commissioner and needing more input from them as to their reasoning.

**MOTION TO
WITHDRAWN
RECOMMENDA
TION TO ADOPT
MODEL
REGULATIONS.
8:19 pm**

Steven made a motion seconded by Larsen to withdraw his recommendation to adopt the Model Regulations.

**BOARD
DISCUSSION
8:20 pm**

The Board discussed holding a workshop in June and that a letter should be sent to the River Commission and the Conservation District inviting them to the workshop.

**MAIN MOTION
TO
RECOMMEND A
WORKSHOP
(FRTA 16-01)
8:20 pm**

Sirucek made a motion seconded by Horn to hold a workshop on the proposed Floodplain and Floodway Management Regulations.

**BOARD
DISCUSSION
8:20 pm**

None

**ROLL CALL TO
HOLD JUNE
WORKSHOP
8:21 PM**

On a roll call vote the motion passed seven (7) to one (1) with Stevens dissenting.

**OLD BUSINESS
8:21 pm**

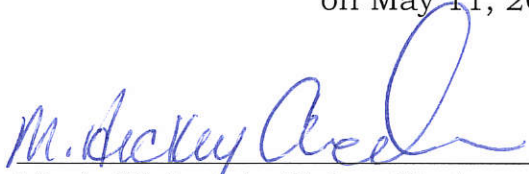
None


**NEW BUSINESS
8:22 pm**

None

**ADJOURNMENT
8:22 pm**

The meeting was adjourned at approximately 8:22 pm. on a motion by Schlegel. The next meeting will be held at 6:00 p.m. on May 11, 2016.


Marie Hickey-AuClaire, Chairman


Danene Thornton, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 05 / 11 / 16